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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,119	01/17/2006	Cinderella Christina Gerhardt	F7718(V)	6138
201 7590 12/14/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER PANDE, SUCHIRA	
			ART UNIT 1637	PAPER NUMBER
			MAIL DATE 12/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	10/565,119	GERHARDT ET AL.	
	Examiner	Art Unit	
	Suchira Pande	1637	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11/30/07 & 12/05/07 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 3, 5-9, 12 and 13.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

KENNETH R. HORLICK, PH.D.  
PRIMARY EXAMINER

Suchira Pande  
Examiner  
Art Unit: 1637

*[Signature]*  
12/12/07

Continuation of 3. NOTE: Limitation added to claim 12 changes the scope of the claim. The amended claim 12 in the present form raises 112 2nd par. concerns. The claimed method lacks the active step that should be performed in addition to claim 3 that will allow one to screen a test compound for drugs or functional ingredients for food products that modulate feelings of satiety or appetite in humans or animals.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant has amended base claim 3 and is arguing the motivation to combine references. Amended claim 3 is a method where test compounds are screened for their effect on ghrelin expression. The method requires use of cell lines identified by their ATCC numbers that should be grown in a suitable media. Cited art Atten et al teaches : wherein the cell line is selected from RF-1 having ATCC number CRL-1864 and RF-48 having ATCC number CRL-1863 (see page 1424 section 2.2 where RF-1 having ATCC number CRL-1864 and RF-48 having ATCC number CRL-1863 are taught). Atten et al. also teach the exact growth media claimed in the instant application to grow these cell lines. Atten et al. teach wherein the medium is Leibovitz's L15 containing 10% (vol/vol) foetal bovine serum and 2 mM L-glutamine, and wherein the cell line is grown at a temperature of 37.degree. C. in the absence of CO<sub>2</sub> (see page 1424 section 2.2.). Atten et al. states the Leibovitz's media taught is supplemented with non-essential amino acids and do not explicitly recite using 2 mM L-glutamine. Glutamine is classified as a nonessential amino acid (see report in Le Magazine published on September 1999 by Greenwell). One of ordinary skill in the art knows that MEM media routinely used for cell culture contains 292 mg/l L-glutamine. Using the formula weight provided by Sigma Aldrich as 146.14 for L-glutamine one can calculate that 292.28 mg of L-glutamine/l media would result in 2 mM L-glutamine. So its clear that one of ordinary skill would add the appropriate amount of L-glutamine as a non- essential amino acid to the media taught by Atten et al.

Since the claimed cell line and the growth media and conditons of growth claimed are identical to those taught by prior art, Then its inherent that the genes expressed by these identical cells under those identical growth conditions are inherently the same as those instantly claimed. In other words its inherent property of CRL-1864 and CRL-1863 cell lines that they produce ghrelin when grown in above growth conditions. If these cells are exposed to a test compound then if it has an influence on the expression/synthesis of ghrelin (which is an inherent property of the claimed cell lines as explained above) that can be measured thereby one can screen for effects of test compounds on ghrelin expression and/or secretion. Cited art Ji et al. teaches use of cell lines RF-1 (having ATCC number CRL-1864) and RF-48 (having ATCC number CRL-1863) to screen a variety of compounds. In view of the combined teachings of Atten et al. and Ji et al. it would be obvious to one of ordinary skill to practice the method of screening compounds as taught by Ji et al. in the method of Atten et al. Thus cited art does teach the method of amended claim 3.

Regarding claim 3, amendment to claim 3 obviates the 112 2<sup>nd</sup> par. rejection.

Regarding claim 12, the amendment to claim 12 does not address the lack of active step issue cited in previous office action.

Hence the cited art is still applicable to amended claims and there is an outstanding 112 2<sup>nd</sup> par. rejection that is not addressed by amendment to claim 12. Thus neither is the application in condition for allowance nor does it simplify matters for appeal in the present form.